Transitional Justice Will Have to Wait

Ismael Muvingi

16 February 2009

Introduction

Talk of transitional justice before political transition in Zimbabwe is premature and possibly pointless. The focus of discussion therefore needs to shift toward the more immediate and pressing imperative of political change. Zimbabwe stands on the brink of a Somalia-type disorder, and regional efforts have thus far concentrated on pressing the Movement for Democratic Change (MDC) into joining the Mugabe regime in the hope that this will facilitate an orderly transition of power. For the MDC, that route is fraught with danger, but transition is fast becoming a desperate need rather than a political aspiration.

In this essay, I highlight three arguments that militate against the pursuit of transitional justice at this point. First, holding ZANU–PF accountable for its criminal conduct is not feasible while the party still holds the reins of power. The ZANU-PF political elite will resist accountability, the police and senior army personnel are complicit in criminal conduct, and the judiciary has been co-opted by the government. Second, any attempt at truth telling and reconstruction of the ZANU–PF’s political, social and economic narrative is at this point equally unfeasible and will pose serious physical danger to any potential participants. Third, the country is literally on its knees economically and currently has neither the political will nor the resources for embarking on transitional justice processes.

Repressive regimes rarely engage seriously in accountability processes that focus on their own actions. It is therefore hard to imagine ZANU-PF acceding to transitional justice processes in any form while it remains in power. Transitional justice, in its narrowest conception, is limited to the criminal prosecution of wrongdoers, but on more comprehensive accounts, it encompasses a wider range of processes as defined by Alex Boraine: accountability, truth recovery, reconciliation, institutional reform and reparations. Taking each of these transitional justice options in turn, it is clear that none of these can be envisioned in Zimbabwe before a radical political transformation.

Unfeasible Transitional Justice Options

First, accountability comes through the rule of law and in Zimbabwe today that is seriously compromised, and is likely to remain so until there is genuine political change. A partisan police force that is itself one of the instruments of repression is unlikely to bring ZANU-PF personnel to justice, and even if it did, a judiciary that has been bought

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1 Alexander L. Boraine, “Transitional Justice: A Holistic Interpretation”, *Journal of International Affairs*; Fall 2006; 60, 1.
off with farms and satellite TVs is not likely to mete out justice to its benefactors. Therefore, accountability based on criminal prosecution is not an option.

Second, there have been various experiments with processes for recovering the truth about past violations: truth commissions, trials, victim and offender narratives and public discourses, among others. These mechanisms all presume an ability of participants to speak with considerable freedom and security. But, public disagreement with ZANU-PF remains a very dangerous enterprise and conditions are not yet conducive for truth seeking. The dreaded Central Intelligence Organisation (CIO) and the ZANU-PF militia (the so-called “green bombers”) must be disbanded before anyone can feel safe about speaking out against the government. Third, attempts at reconciliation would be both potentially hurtful and possibly counterproductive at this point as people’s wounds are not only still open but are still being inflicted. There cannot be reconciliation while government suppression continues unabated.

Fourth, prosecution of ZANU-PF leaders requires serious institutional reform, but this in turn requires at the very least the political will for change and a significant resource commitment. The MDC may have the commitment and could conceivably mobilise international aid and investment, but so far it has not even gained a toehold on power. Mugabe’s conduct during the negotiations for a Government of National Unity indicates that ZANU-PF has no desire to relinquish political control. Meanwhile, ZANU-PF lacks the resources to keep the existing institutions functioning, let alone embark on any sort of reform. The government’s only answer to a collapsing economy has been to print more and more worthless money.

Finally, is it desirable for compensation or restitution to be paid to those whose rights have been violated? Reparations are a symbol of contrition that helps foster reconciliation and in some cases they can constitute substantive restitution for the losses victims suffer. But this is unlikely in Zimbabwe. The state coffers are empty and compensation raises many thorny issues, including questions of who would pay for reparations; whether it can be justifiable that public resources raised from taxing citizens, some of whom have themselves been victims, be used for reparations; and in particular, whether there is sufficient acknowledgement of wrongdoing and willingness to compensate on the part of ZANU-PF.

**Addressing the Humanitarian Catastrophe**

Concurrent to the political and economic dynamics that currently constrain the feasibility of any transitional justice processes, there is a humanitarian disaster unfolding in Zimbabwe. This gives urgency to the need for a political transition so that desperately needed resources can be channeled into the country. The UN’s Food and Agricultural Organisation (FAO) states that droughts and floods as well as a shortage of necessary farming inputs have caused a serious food shortage. As a result, the UN estimates that “in the first quarter of 2009 more than 5.1 million people, nearly half the population, will

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2 *FAO* report “Extreme dry weather worsens food situation in Zimbabwe: Bleak prospects for the upcoming harvest” 10 April 2008, Rome
require food assistance.” Where food and other basic necessities are available in the country, they remain unattainable unless one has external sources of funding or professes allegiance to the ruling party. Given the unemployment levels and the record breaking hyperinflation, life for the ordinary person is nasty, brutish and, for many, short. Zimbabwe now has the lowest life expectancy rate in the world.

The health situation in Zimbabwe is perilous. The country already had one of the worst HIV-Aids problems and now, due to the failure of the government to ensure sanitation, a cholera outbreak is decimating urban populations. With the onset of the rainy season, if there is no external intervention, things will only get worse. South Africa has so far resisted calls for it to use its considerable leverage to bring about political change in Zimbabwe, but the disaster is now spreading into South Africa. Cholera-stricken Zimbabweans are flocking south in their hundreds in search of medical services. Major Zimbabwe hospitals have shut down and there are few medical facilities or supplies within the country. As some reports have indicated, hospitals have simply turned into morgues. It is so bad that Physicians for Human Rights has called for Zimbabwe’s collapsed healthcare system to be placed under international receivership.

The ZANU-PF government is incapable of addressing these crises because it is a central part of the problem. It has no money, no international political or social capital for securing aid and clearly has run out of ideas for tackling the collapse. The government did attempt to secure aid and investment from China as an alternative to Western human rights-conditioned assistance and dwindling investment. So far however, the “look east” policy has not helped resuscitate the collapsing economy. In a desperate move, the government is now trying to court Russia. Mugabe has never liked Russia, which as the Soviet Union, supported his political rival, Joshua Nkomo, and to date Mugabe has studiously avoided having any close relations with Moscow. The outcome of the new initiative remains to be seen, but given past performance, hope in this latest venture would be misplaced.

These realities emphasise the need for political transition before any talk of transitional justice. A famous community mobiliser stated, tongue in cheek, that ethics are the prerogative of the victor or at the very least the successor. That may sound cynical, but

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6 Cape Times, Call to place Zimbabwe's collapsed healthcare under world receivership January 14, 2009
there is a logic to it. The very prospect of facing justice ranks high if not top of the list in explaining the intransigence of the Zimbabwean uniformed brass and political elite. They have much to fear from their past conduct. They would have to be extremely naïve or altogether out of touch with reality to expect forgiveness from the victims of state brutality. ZANU-PF will continue to use every conceivable tactic to avoid accountability.

Zimbabwe is thus caught between the proverbial rock and a hard place. Should immunity and a golden handshake be promised to encourage ZANU-PF to let go? That option is tempting and has driven the MDC to participate in a patently undesirable negotiation exercise and the resultant “government of national unity.” It is an unattractive proposition because the MDC risks contamination by association and, worse, inheriting the ZANU-PF mess without the power to clean it up. An outright electoral victory would have given the MDC a clean slate and a firm grip on government, but clearly free and fair elections under ZANU-PF control are not possible. The state is militarised and the population is terrified. The National Constitutional Assembly has started to talk in terms of do or die: that it may be time to face army bullets and get real changes through a public uprising. After all, people are dying anyway. But this is a nation that has been traumatised by state brutality and debilitated by hunger, disease and the memories of another recent war. And there is a political vacuum: the middle class and even a substantial proportion of the working class have fled the country.

Archbishop Desmond Tutu and Kenyan Prime Minister Raila Odinga have called for forceful intervention, with Julius Nyerere’s 1978 intervention in Uganda in mind. But as Mugabe has scornfully challenged the African leadership, who in Africa has the moral standing to forcibly remove him? Botswana has called for an African blockade, which could conceivably work if implemented, but requires South African support, which will not happen. The South African government shouts the language of human rights and social justice but its foreign policies betray a serious disregard for the wellbeing of ordinary Zimbabweans. It has been the major stumbling block for United Nations resolutions condemning Mugabe and ZANU-PF.11

That brings us to the harsh realities of political compromises and the sacrifice of justice. Immunity for Mugabe and ZANU-PF is what Thabo Mbeki’s quiet diplomacy sought to achieve: Mugabe gets a golden twilight and ZANU-PF avoids accounting for its misdeeds through a long drawn out transition. That is a bitter pill for justice. But then the present is not a good place. Paradoxically ZANU-PF’s major bargaining chip has been the desperate condition of the masses: their salvation for ZANU-PF’s immunity.

Perhaps as Boraine said of Afghanistan, what Zimbabwe currently needs most is food, medication and good governance.12 Transitional justice should take second place to the need for political change that will enable reconstruction to begin. The main imperative now is literally survival. It is also social and political order. If the disgruntlement in the

12 Boraine supra 27
army ranks spreads, the worst of the Zimbabwean situation may yet be to come. Therefore, while transitional justice remains desirable and important, what is currently more pressing is to determine how political power can be transferred and the humanitarian crisis addressed.

The Southern African Development Community has forced through a government of national unity. The MDC’s Tsvangirai will be the prime minister responsible for rescuing the country from collapse, but he takes on the challenge without much power as Mugabe remains president with the power of dismissal. The international community has expressed scepticism and the EU has made clear it will not resume aid or investment unless there is evidence of real change. The sub-region is divided, with Botswana openly criticising the outcome of the negotiations and Zambia and Tanzania reportedly unconvincing of the viability of this option. Internally, people are clinging to any source of hope, but there too, scepticism is widespread. A new and clean election, managed by the African Union or the United Nations, would have been ideal. As second best, some significant devolution of power from ZANU-PF would have helped start the transition of power. Instead, Mugabe secured everything he wanted: somebody else to share the blame but not the power. SADC has authored a *fait accompli* and rendered an externally supervised election near-impossible. Now we can only hope that Tsvangirai can work a miracle of extraordinary proportions.

Ismael Muvingi is an Assistant Professor of Conflict Resolution at Menno Simons College, affiliated with the University of Winnipeg: imuvingi@gmail.com

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13 *IRIN* “Zimbabwe: Underwhelming Confidence in Power-Sharing Deal” 2 February 2009